FILED

NOV 5 1996

OFFICE OF THE CLERK

No. 96-___

In The

Supreme Court of the United States

October Term, 1996

AFRICAN UNION METHODIST PROTESTANT CHURCH AND CONNECTION,

v. *Petitioner,*

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,

Respondent.

AND

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,

v. *Petitioner,*

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,

Respondent.

AND

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, DELBERT L. JACKSON, and K. KAY SHEARIN,

v. *Petitioners,*

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, MORRIS A. COMEGYS, and SARA B. GARDNER,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of The State Of Delaware

PETITION FOR WRIT OF CERTIORARI

K. KAY SHEARIN
1301 Maple Avenue
Elsmere, DE 19805
302-995-6028
Counsel for Petitioners

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

83 pp

QUESTIONS PRESENTED

1. Did the court below err in holding that the former congregation of the hierarchical denomination owned the real estate, when that court owed full faith and credit to the rulings of the highest courts of the District of Columbia and the Commonwealth of Pennsylvania that the congregations held the real estate in trust for the denomination?

2. In invalidating (a) the quitclaim securing the denomination's financing and (b) the certificate verifying its charter, and in dismissing its suits (a) to enforce the congregation's contract to convey the property to the denomination upon secession and (b) for breach of that contract, and in penalizing the denomination, its presiding prelate, and its attorney, did the court below violate the constitutional (a) guarantees of religious freedom, freedom of speech, freedom of association, freedom to petition for redress, access to the courts, due process, privileges or immunities, and equal protection and (b) prohibitions against bills of attainder, *ex post facto* laws, and laws impairing the obligation of contracts?

3. Did the court below deny petitioners due process when it held them in civil contempt and fined them $18,485 for the completed acts of preparing and recording the quitclaim, filing the suit to enforce the contract, and obtaining the certificate verifying the charter?

LIST OF PARTIES

African Union Methodist Protestant Church and Connection, a/k/a African Union First Colored Methodist Protestant Church, f/k/a African Union Church, f/k/a Union Church of African Members

The Conference of African Union First Colored Methodist Protestant Church*

Delbert L. Jackson

K. Kay Shearin

Mother African Union First Colored Methodist Protestant Church, f/k/a Union Church at Wilmington

Morris A. Comegys

Sara B. Gardner

---

* The AUMP Church is effectively the Conference's parent corporation, although neither of them has any stock or any stockholder, because the Conference is a non-stock business corporation that performs the AUMP Church's temporal functions.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

LIST OF PARTIES ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW 1

JURISDICTION 1

RELEVANT CONSTITUTIONAL PROVISIONS 1

STATEMENT OF THE CASE 2

REASONS FOR GRANTING THE PETITION 7

I. THE SUPREME COURT OF THE STATE OF DELAWARE HAS DECIDED THE IMPORTANT FEDERAL QUESTION OF APPLYING THE FIRST AMENDMENT TO A CHURCH-PROPERTY DISPUTE IN A WAY THAT CONFLICTS WITH THE DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND OF THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA 7

II. THE SUPREME COURT OF THE STATE OF DELAWARE HAS DECIDED SEVERAL IMPORTANT FEDERAL QUESTIONS IN WAYS THAT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT 9

CONCLUSION 10

TABLE OF AUTHORITIES

Page

Cleaver v. Conference of AUFCMP Church, 240 F.2d 57 (D.C.Cir. 1956) 2, 7

Conference of AUFCMP Church v. Shell, 659 A.2d 77 (Pa.Cmwlth.), *cert. denied*, 668 A.2d 1138 (Pa. 1995) 4, 5, 7-8

Cummings v. Missouri, 71 U.S. [4 Wall.] 277 (1867) 9

Jones v. Wolf, 443 U.S. 595 (1979) 9

Kreshik v. St. Nicholas Cathedral, 363 U.S. 190 (1960) 9

NAACP v. Button, 371 U.S. 415 (1963) 9

Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) 9

Union Church of Africans v. Sanders, 6 Del. [1 Houst.] 100 (Del. 1855) 2

UMW v. Bagwell, 114 S.Ct. 2552 (1994) 4, 9

U.S. Const.:
Art. I, § 9 & § 10 ..... 1, 6

Art. IV, § 1 & § 2 ..... 1, 6

Art. VI 1

Amend. I 1, 4, 6

Amend. V 1, 4, 6

Amend. VII 1, 6

Amend. XIV, § 1 ..... 1, 4, 6

TABLE OF AUTHORITIES – Continued

Page

28 *U.S.C.* § 1257(a) 1

Del.Const. Art. I, § 7 6

Del.C., Title 8, Chap. I 2

8 *Del.C.* § 122 6

8 *Del.C.* § 141(e) 6

8 *Del.C.* § 312 ..... 4, 6

Del.C., Title 27, Chap. I 2

Del.C.Jud.Cond., Canon 3 5

Del.Super.Ct.Civ.R. 41(e) 5

OPINIONS BELOW

The court below, which had consolidated the three appeals before it, issued no opinion but only the three orders reprinted in the Appendix [APP. *at* 1, 3, 5]. The trial court's opinion that supported all four orders [APP. *at* 7, 9, 17, 21] at issue in the three appeals is reprinted in the Appendix [APP. *at* 22].

JURISDICTION

The Supreme Court of the State of Delaware entered final judgment orders in the three appeals on 23 September 1996. This Court has jurisdiction pursuant to 28 *U.S.C.* § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The provisions of the Constitution of the United States of America involved in the case and set out in the Appendix are:

Article I, § 9 & § 10 [APP. *at* 59].

Article IV, § 1 & § 2 [APP. *at* 59].

Article VI [APP. *at* 59].

Amendment I [APP. *at* 60].

Amendment V [APP. *at* 60].

Amendment VII [APP. *at* 60].

Amendment XIV, § 1 [APP. *at* 60].

STATEMENT OF THE CASE

As recited by Delaware's highest court in *Union Church of Africans v. Sanders*, 6 Del. [1 Houst.] 100, 101-05 (Del. 1855): In 1813 the Union Church of African Members was incorporated as a religious denomination pursuant to a Delaware law passed in 1787, and it came to be called the "African Union Church." After its first congregation, which was known as the "Union Church at Wilmington," it established other congregations in five states and formed the [Yearly] Conference to administer the hierarchical government set forth in the *Discipline* the AU Church adopted.

In 1866 the First Colored Methodist Protestant Church merged into the AU Church, and then the 1813 corporation used the names "African Union First Colored Methodist Protestant Church" and "African Union Methodist Protestant Church" interchangeably and was usually called the "AUMP Church." In 1924 its original congregation was incorporated under Title 27 [Chap. I: Religious Societies & Corporations] of the *Delaware Code*, taking as its name "Mother AUFCMP Church." In 1941 the Conference was incorporated under Title 8 [Chap. I: General Corporation Law] of the *Delaware Code*.

In 1953 the AUMP congregation in Washington DC, which was a District of Columbia corporation and held title to its real estate, seceded from the Church and kept the real estate. The Conference filed suit for the property; after trial the federal district court ruled for the denomination, and the appellate court affirmed. *Cleaver v. Conference of AUFCMP Church*, 240 F.2d 57 (D.C.Cir. 1956). The 17th edition of the *Discipline*, issued in 1958, included

language specifically requiring any congregation that seceded from the AUMP Church to leave its real property in the Conference, and the form contract each congregation signed with the pastor the Bishop assigned each year was revised to include language binding the congregation to that provision.

In 1989 the AUMP congregation in Lancaster PA, which was a Pennsylvania corporation and held title to its real estate, seceded from the Church and kept the real estate. The Conference filed suit for the property.

On 3 June 1990 the Mother congregation signed a pastoral contract for June 1990 through May 1991 that incorporated the *1958 Discipline* provision requiring the property to remain with the Conference if the Mother congregation seceded. On 6 April 1991, as part of a reorganization approved by the Church's representative legislature, all the AUMP congregations signed quitclaims releasing their interests in real property to the Conference; the one for the Mother congregation's property was recorded on 8 April. On 9 April the Mother congregation voted to secede from the AUMP Church, and on 18 April it filed No. 12055-NC in Delaware's Court of Chancery to be declared independent of the AUMP Church and to invalidate its 6 April quitclaim.

After trial, in October 1992 the Pennsylvania court entered judgment for the Conference for the Lancaster property. After trial, in February 1993 the Delaware court entered judgment [APP. *at* 55] invalidating the quitclaim and ruling the Mother congregation seceded on 9 April 1991. Delaware's Supreme Court affirmed, and this Court

denied the denomination's petition for a writ of certiorari.

In December 1993 the Conference signed a quitclaim of all its interests in Delaware real property to a Pennsylvania entity to secure that entity's continued financing of the Conference's operations, and that entity recorded that quitclaim in Delaware. In May 1994 the Conference filed No. 1674-S in Delaware's Court of Chancery for specific performance of the contract obligating the Mother congregation to convey the property to the Conference when it seceded from the Church in April 1991.

The Mother congregation then reopened No. 12055 by moving to hold petitioners in contempt of the Court of Chancery's February 1993 judgment order, for filing No. 1674; the congregation later added other allegations of contempt. In their briefs on those motions and at the hearings on 20 June and 7 November 1994 petitioners raised the constitutional issues, including: 1st Amendment rights [D.I.#179 at ¶ 5]; 5th & 14th Amendment due process [D.I.#179 at ¶ 6]; civil contempt under *UMW v. Bagwell,* 114 S.Ct. 2552 (1994) [D.I.#268 at ¶ 1 & ¶ 3.b].

In May 1995 Pennsylvania's Commonwealth Court affirmed the judgment for the Conference. *Conference of AUFCMP Church v. Shell,* 659 A.2d 77 (Pa.Cmwlth. 1995). In June 1995 the AUMP Church was granted a certificate, under 8 *Del.C.* § 312 [APP. *at* 63], verifying its 1813 charter. In July 1995 Delaware's Court of Chancery issued its opinion [APP. *at* 22], which did not address any of the federal questions petitioners had raised, and entered one judgment order [APP. *at* 21] dismissing No. 1674 and another [APP. *at* 17] invalidating part of the December

1993 quitclaim and holding petitioners in contempt for preparing and recording that quitclaim and for filing No. 1674.

After the Conference's motion for rehearing was denied, the AUMP Church filed No. 95C-07-230 in Delaware's Superior Court for damages for the Mother congregation's usurpation, in No. 12055, of the AUMP Church's rights as the 1813 corporation, and the Church moved that court to allow it to proceed *in forma pauperis*. Between July and September the judge to whom No. 95C-07-230 was assigned conferred *ex parte* with the vice chancellor before whom No. 12055 was pending, which violated Canon 3.A of the *Delaware Judges' Code of Judicial Conduct* [APP. *at* 65]. Then the vice chancellor entered a judgment order [APP. *at* 9] invalidating the § 312 certificate, holding petitioners in contempt for filing for it, and fining petitioners $18,485 for the acts held to be contempts in the July order. On the next business day the judge granted the IFP motion and *sua sponte* dismissed the Church's complaint [APP. *at* 7] without following the procedure *Del.Super.Ct.Civ.R.* 41(e) requires [APP. *at* 65].

In October 1995 Pennsylvania's Supreme Court declined to review the Commonwealth Court's affirmance of the judgment for the Conference. *Conference of AUFCMP Church v. Shell*, 668 A.2d 1138 (Pa. 1995). Petitioners appealed to Delaware's Supreme Court: (No. 318, 1995) the dismissal of No. 1674; (No. 409, 1995) the dismissal of No. 95C-07-230; and (No. 408, 1995) the invalidations of the December 1993 quitclaim and § 312 certificate and the contempt rulings and fine.

In their appellate briefs petitioners asserted: The 1993 order did not say it revoked the Conference's right, under 8 *Del.C.* § 122 (4)&(13) [APP. *at* 61], to quitclaim its current and future interests to its lender. The 1993 order did not say it revoked the Conference's right, under 8 *Del.C.* § 122 (2)&(8) [APP. *at* 61], to sue the Mother congregation on its pastoral contract. The 1993 order did not say it revoked the Church's right, under 8 *Del.C.* § 312 (a)&(b) [APP. *at* 63], to verify its status as the 1813 corporation. The 1993 order did not say it revoked the Bishop's exemption, under 8 *Del.C.* § 141(e) [APP. *at* 63], from personal liability for his acts as the Conference's sole director. The 1993 order did not say it revoked the Bishop's and the attorney's rights of conscience under *Del.Const.* Art. I, § 1 [APP. *at* 61].

Petitioners argued that invalidating the quitclaim and the § 312 certificate, dismissing No. 1674 and No. 95C-07-230, and holding petitioners in contempt and fining them $18,485 gave the 1993 order the effect of a bill of pains and penalties, denied them equal protection, privileges of citizenship, and due process, and abridged their fundamental civil rights. In their four appellate briefs they raised the federal constitutional issues of: due process [9/28/95 Brief at 16; 11/27/95 Brief at 2, 3, 8, 11-12, 16-17], equal protection [11/27/95 Brief at 2, 3], privileges and immunities [*Id.* at 2, 3, 11], right to petition [*Id.* at 2], access to state courts [*Id.* at 2, 11], bills of attainder [*Id.* at 2, 3, 9-10, 13], *ex post facto* laws [*Id.* at 2, 3, 10], impairment of contracts [*Id.* at 2, 3, 10-11], full faith and credit [6/12/96 Brief at 11], and 1st Amendment rights [*Id.* at 24-25].

It was undisputed that the standard of review of all the issues before the appellate court was *de novo*. On 23 September 1996 that court affirmed the judgments below without addressing any of petitioners' arguments [APP. *at* 1, 3, 5].

REASONS FOR GRANTING THE PETITION

I.

THE SUPREME COURT OF THE STATE OF DELAWARE HAS DECIDED THE IMPORTANT FEDERAL QUESTION OF APPLYING THE FIRST AMENDMENT TO A CHURCH-PROPERTY DISPUTE IN A WAY THAT CONFLICTS WITH THE DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT AND OF THE SUPREME COURT OF THE COMMONWEALTH OF PENNSYLVANIA.

The District of Columbia court decided that the Conference was a "general and governing religious organization," and the local congregation was "a subordinate member" that had seceded, so the denomination was entitled to control the property. *Cleaver v. Conference of AUFCMP Church*, 240 F.2d 57, 57 (D.C.Cir. 1956).

The Pennsylvania court

> concluded that the clear and unambiguous language of Article X, Paragraph 6 of the Book of Discipline is incapable of any other construction: all church property shall be deeded to the members and the Conference and in the event of a disbanding or secession of the members, the property remains with the Conference. . . . [The

> congregation's] acceptance of the real estate conveyance while the aforementioned provision was still in effect represents conclusive evidence of [the congregation's] intent to take and hold the property in accordance with terms of the Book of Discipline. [*Conference of AUFCMP Church v. Shell*, 659 A.2d 77, 79 (Pa.Cmwlth.), *cert. denied*, 668 A.2d 1138 (Pa. 1995).]

Article X, ¶ 6, was the provision of the *1958 Discipline* incorporated by specific reference in the Mother congregation's pastoral contract. Ruling that after the local congregation seceded from the AUMP Church it held the property in trust for the denomination under that provision, the Pennsylvania court imposed a constructive trust and ordered the congregation to deed the property to the Conference [*Id.*].

That congregation bought its property in 1980, held title in its own name alone, and seceded in 1989 [*Id.* at 78]. The Mother congregation bought its property in 1969, held title in its own name alone, and seceded in 1991. After the April 1991 quitclaim to the Conference was adjudicated invalid, as a congregation that had seceded from the AUMP Church the Mother congregation held the property in trust for the Conference under the terms of the *1958 Discipline*, so it must be required to convey the property to the Conference, as the Conference claimed in No. 1674.

II.

THE SUPREME COURT OF THE STATE OF DELAWARE HAS DECIDED SEVERAL IMPORTANT FEDERAL QUESTIONS IN WAYS THAT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT.

The decision of the Delaware court, letting this former congregation take property away from this hierarchical denomination when explicit secular language in the governing documents requires the congregation to deed the property to the denomination upon secession, is in conflict with the entire line of church-property cases this Court has decided since 1871, especially: *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190 (1960); *Serbian Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Jones v. Wolf*, 443 U.S. 595 (1979).

The decision of the Delaware court, penalizing petitioners for exercising their federal rights of expression, association, and petition, is in conflict with *NAACP v. Button*, 371 U.S. 415 (1963).

The decision of the Delaware court, depriving petitioners of rights under Delaware's constitution, statutes, and rules, is in conflict with *Cummings v. Missouri*, 71 U.S. [4 Wall.] 277 (1867).

The decision of the Delaware court, fining petitioners $18,485 for completed acts held to be in civil contempt of the 1993 order, is in conflict with *UMW v. Bagwell*, 114 S.Ct. 2552 (1994).

CONCLUSION

Petitioners respectfully request that this Court issue a writ of certiorari directed to the Supreme Court of the State of Delaware in all three of the cases below.

Respectfully submitted,

K. Kay Shearin
1301 Maple Avenue
Elsmere, DE 19805
302-995-6028
Counsel for Petitioners

APPENDIX

Page

Del. 9/23/96 order, No. 318, 1995.....App. 1

Del. 9/23/96 order, No. 408, 1995.....App. 3

Del. 9/23/96 order, No. 409, 1995.....App. 5

Del.Super. 9/25/95 order, No. 95M-07-230.....App. 7

Del.Ch. 9/22/95 order, No. 12055.....App. 9

Del.Ch. 7/13/95 order, No. 12055.....App. 17

Del.Ch. 7/13/95 order, No. 1674.....App. 21

Del.Ch. 7/13/95 opinion, Nos. 12055&1674.....App. 22

Del.Ch. 2/24/93 order, No. 12055.....App. 55

U.S. Constitution

Art. I, § 9 & § 10 .....App. 59

Art. IV, § 1 & § 2 .....App. 59

Art. VI.....App. 59

Amend. I.....App. 60

Amend. V .....App. 60

Amend. VII .....App. 60

Amend. XIV, § 1.....App. 60

Del. Constitution, Art. I, § 1.....App. 61

Del. Code, Title 8, § 122.....App. 61

Title 8, § 141(e) .....App. 63

Title 8, § 312.....App. 63

Del. Code of Jud. Cond., Canon 3.A(4).....App. 65

Del. Super. Ct. Civ. R., Rule 41(e).....App. 65

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, Plaintiff Below, Appellant, v. MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, Defendant Below, Appellee.	§ § § § § § § § § § § § § §	No. 318, 1995 Court Below: Court of Chancery of the State of Delaware in and for Sussex County C.A.No. 1674

Submitted: September 4, 1996
Decided: September 23, 1996

Before **VEASEY,** Chief Justice, **WALSH,** Justice, and **HORSEY,** Justice, Retired.*

ORDER

This 23rd day of September, 1996, the Court has considered this matter on the briefs filed by the parties, and has concluded that the same should be affirmed on the basis of the well-reasoned Memorandum Opinion of the Court of Chancery dated July 13, 1995.

---

*Sitting by designation pursuant to Supreme Court Rule 2 and Del. Const., art. IV, §§ 12 and 38.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery be, and the same hereby is,

AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, a Delaware Corporation, DELBERT L. JACKSON, and K. KAY SHEARIN,	§	No. 408, 1995
Respondents Below, Appellants/Cross-Appellees,	§	Court Below: Court of Chancery of the State of Delaware in and for New Castle County C.A.No. 12055
v.	§	
MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, a Delaware religious corporation, MORRIS A. COMEGYS, and SARA B. GARDNER, individually and on behalf of others similarly situated,	§	
Plaintiffs Below, Appellees/Cross-Appellants.	§	

Submitted: September 4, 1996
Decided: September 23, 1996

Before **VEASEY,** Chief Justice, **WALSH,** Justice, and **HORSEY,** Justice, Retired.*

---

*Sitting by designation pursuant to Supreme Court Rule 2 and Del. Const., art. IV, §§ 12 and 38.

ORDER

This 23rd day of September, 1996, the Court has considered this matter on the briefs filed by the parties, and has concluded that the same should be affirmed on the basis of the Court of Chancery's well-reasoned Memorandum Opinion and Order dated July 13, 1995 and Order dated September 22, 1995.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery be, and the same hereby is,

AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

IN THE SUPREME COURT OF THE
STATE OF DELAWARE

AFRICAN UNION METHODIST PROTESTANT CHURCH AND CONNECTION, an incorporated Delaware religious denomination,	§	No. 409, 1995
Plaintiff Below, Appellant,	§	Court Below: Superior Court of the State of Delaware in and for New Castle County C.A.No. 95C-07-230
v.	§	
MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,	§	
Defendant Below, Appellee.	§	

Submitted: September 4, 1996
Decided: September 23, 1996

Before **VEASEY**, Chief Justice, **WALSH**, Justice, and **HORSEY**, Justice, Retired.*

ORDER

This 23rd day of September, 1996, the Court has considered this matter on the briefs filed by the parties, and has concluded that the same should be affirmed on the basis of and for the reasons assigned by the Superior Court in its Order dated September 25, 1995.

---

*Sitting by designation pursuant to Supreme Court Rule 2 and Del. Const., art. IV, §§ 12 and 38.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is,

AFFIRMED.

BY THE COURT:

/s/ E. Norman Veasey
Chief Justice

IN THE SUPERIOR COURT OF THE
STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

AFRICAN UNION METHODIST PROTESTANT CHURCH AND CONNECTION,	:	
Plaintiff,	:	Civil Action No. 95M-07-230
v.	:	
MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,	:	
Defendant.	:	

ORDER

WHEREAS, the plaintiff which presents itself in the complaint as hierarchial Christian denomination or "general church" whose financial and legal affairs are administered by the Conference of African Union First Colored Methodist Protestant Church (the "Conference");

WHEREAS, the plaintiff and/or the Conference which allegedly administers its affairs have been embroiled in litigation in the Court of Chancery in and for New Castle and Sussex Counties for a number of years;

WHEREAS, the commencement of this action is in direct violation of the ORDERS of the Court of Chancery In and For New Castle County involving the Conference and the defendant in this action, Civil Action No. 12055, February 24, 1993, Superseding Final Order and Judgment, and decisions dated July 13, 1995, and September

22, 1995, finding the Conference to be in contempt of its February 24, 1993, Final Judgment.

WHEREFORE, IT IS ORDERED this 25th day of September, 1995, as follows:

1. This action is dismissed, with prejudice, as barred by the doctrine of *res judicata* and as a violation of explicit rulings of the Court of Chancery prohibiting "the plaintiff, and their agents, employees, servants, officers, attorneys, successors, assigns, and all others acting in concert or participation with them" from "holding themselves out as having any ownerships interest or control" in the same properties which underlie the pending action. Paragraph 1, subsections (a) and (e), February 1993 Final Judgment.

2. A copy of this Order and the Complaint shall be forwarded to Disciplinary Counsel for the Board on Professional Responsibility for that tribunal to take such disciplinary action against K. Kay Shearin, Esquire, as it deems appropriate.

/s/ S. Del Pesco
Judge Susan C. Del Pesco

Original to Prothonotary
xc: K. Kay Shearin, Esquire
David Glebe, Esquire, Disciplinary Counsel

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, et al.,	)	
Plaintiffs,	)	
v.	)	Civil Action No. 12055
THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, et al.,	)	
Defendants.	)	

ORDER

Date Submitted: August 16, 1995
Date Decided: September 22, 1995

The plaintiffs in this action having moved for an Order adjudicating the defendants, the Conference of African Union First Colored Methodist Protestant Church (the "Conference"), Delbert L. Jackson ("Bishop Jackson") and their attorney, K. Kay Shearin, Esquire (collectively "Respondents"), in contempt of Court, and an Order to Show Cause having been issued, and all Respondents having thereafter been heard,

WHEREFORE, IT IS HEREBY DETERMINED AND ORDERED this 22nd day of September, 1995, as follows:

1. On July 13, 1995, this Court issued an Opinion, and implementing Orders, (a) adjudicating the Respondents in contempt of this Court's February 24, 1993

Superseding Final Order and Judgment (the "February 1993 Final Judgment"), (b) imposing certain sanctions, and (c) dismissing Civil Action No. 1674-S then pending in the Court of Chancery of the State of Delaware in and for Sussex County.

2. Four days later, on July 17, 1995, the Respondents filed a "Motion for New Trial" in C.A. No. 1674-S, and a "Motion for Relief from Judgment" in this action. The asserted basis for those motions was that all of the Court's prior rulings and Orders were based upon the "false" premise that the Mother Church was the corporation this Court had determined to be the owner of the disputed properties that were the subject of this action. That premise, the Respondents claimed, was false, because the corporate owner of the properties was not the Mother Church but, rather, was the "African Union Methodist Protestant Church and Connection" of which Bishop Jackson was the Presiding Prelate. That contention was, in turn, based upon a document entitled "Certificate of Restoration, Renewal, or Revival of the Certificate of Incorporation of the African Union Methodist Protestant Church and Connection" ("Certificate of Revival"). That document was executed by Bishop Jackson and notarized by Ms. Shearin on June 1, 1995, and had been filed with the Division of Corporations of the Secretary of State of the State of Delaware on June 5, 1995. However, it had never previously been disclosed to the Court or to opposing counsel, despite the pendency of the earlier contempt motion that was ultimately decided six weeks later, on July 13, 1995.

3. By Orders dated July 25, 1995, this Court denied the Respondents' Motion for New Trial and Motion for

Relief from Judgments and Other Prior Rulings, on the ground, *inter alia*, that those motions were barred by *res judicata* and were based upon manufactured evidence.

4. The plaintiffs moved for an Order adjudicating that the Respondents, by filing the Certificate of Revival with the Secretary of State, were in contempt of this Court's February 1993 Final Judgment. That motion is well founded and will be granted.

5. During the trial on the merits of this action, Plaintiffs' Exhibits 3, 4 and 8 were admitted into evidence without objection by the defendants or their counsel, Ms. Shearin. Exhibit 3 was a certified copy of the original 1813 Articles of Incorporation of the Mother Church. Those Articles provided (in Article 1st) that the name of the Church was "Union Church of African Members." Exhibit 4 was a certificate dated July 14, 1924 and duly recorded in the office of the Recorder of Deeds in and for New Castle County, Delaware. Exhibit 4 changed the corporate name to "Mother African Union First Colored Methodist Protestant Church," the current name of the corporate plaintiff in this action. The history of that name change was recited in a copy of a mortgage, dated January 6, 1961, that was duly recorded and admitted into evidence as Exhibit 8.

6. Based on the foregoing trial evidence, this Court determined conclusively, as fact, the following matters that it had determined preliminarily in its Memorandum Opinion dated May 15, 1991, at pages 3, 4, and 6:

> The Mother Church was incorporated as the 'African Union Church" on September 18, 1813. (Jackson dep., exh. 9; A-150). . . . On July 14,

> 1924, the Mother Church's certificate of incorporation was amended to change the corporate name to "Mother African Union First Colored Methodist Protestant Church,' *i.e.*, the Mother Church. (A 155-157). Insofar as the record reveals, that amendment is the only one ever made to the 1813 certificate of incorporation. . . .
>
> * * *
>
> Although the defendants contended at oral argument that the Conference was the corporation founded in 1813 as the 'African Union Church,' the record shows otherwise. The Conference was incorporated on September 19, 1941, as the 'African Union First Colored Methodist Protestant Church.' On March 10, 1953, its certificate of incorporation was amended to change the corporate name to 'the Conference of African Union First Colored Methodist Protestant Church,' *i.e.*, the Conference.

7. Despite those determinations, which by then were conclusive and final, the Respondents filed the Certificate of Revival with the Secretary of State of the State of Delaware, Division of Corporations on or about June 5, 1995. That document, which was executed by Bishop Jackson and notarized by Ms. Shearin, (a) purports to "revive" the 1813 certificate of incorporation of the corporate predecessor to the Mother Church; (b) represents that Bishop Jackson was duly elected by the membership of the corporation as the corporation's "Presiding Prelate," which is "equivalent to both president and sole member of the board of directors;" and (c) represents that "the issue of the corporation's status has been raised in several court cases in Delaware and elsewhere since 1991, and [that] the courts have made *different assumptions*

about the corporation's continued existence and the *current validity* of its 1813 certificate of incorporation." (emphasis added).

8. Those representations were utterly false. This Court had previously adjudicated that the Mother Church (*not* the Conference) was the corporation originally formed in 1813. Bishop Jackson, who is the Presiding Prelate of the Conference, is not and never was elected as the Presiding Prelate, President, or sole director of the Mother Church. The Mother Church is, moreover, an ongoing corporation in good standing, whose articles of incorporation are in no need of "restoration," "renewal," or "revival." Nor has this Court ever made "various assumptions" about the corporation's status. On the contrary, this Court has conclusively determined that status to be that the corporation originally formed in 1813 is the Mother church, whose governing body is *not* the Conference or Bishop Jackson.

9. The representations contained in the Certificate of Revival were not simply false, but knowingly false. They were made purposefully to circumvent the Orders of this Court in this action vesting ownership of the disputed property in the Mother Church, and confirming that the Conference and Bishop Jackson have no authority or control over the Mother Church or that property. The filing of the certificate by the Respondents is simply the latest manifestation of their contumacious refusal to accept and abide by the determinations and Orders of the Courts of this State in this action.

10. This Court's Superseding Final Order and Judgment, dated February 24, 1993, permanently enjoined the Respondents as follows:

> (a) The defendants, and their agents, employees, servants, officers, attorneys, successors, assigns, . . . are hereby enjoined and restrained from interfering with the quiet title, operation, use, enjoyment and governance of the properties of the Mother African Union First Colored Methodist Protestant Church (the "Mother Church"). . . . Said operation, use, enjoyment and governance reside solely in the Mother Church, its duly elected Trustees, its members and their successors.
>
> . . .
>
> (d) The defendants and all others identified in paragraph (a) above are enjoined and restrained from recording in the future any further . . . documents relating to the title of the properties identified in paragraph (a) hereof.
>
> (e) The defendants, and all others identified in paragraph (a) above, are hereby enjoined and restrained from (i) holding themselves out as having any ownership interest or control in the above identified properties and any other property of the Mother Church. . . .

11. As this Court determined in its July 13, 1995 Opinion adjudicating the Respondents in contempt, the Respondents had been (and still are) enjoined from asserting direct claims of ownership to the disputed properties, and their violation of that injunction constituted contempt. The Certificate of Revival is the functional equivalent of a direct claim of ownership, except that it is

one step removed, in that it is asserted at the corporate level. That is, in the Certificate of Revival, Bishop Jackson, assisted by Ms. Shearin, now claims to control the corporation that owns the properties, rather than claiming to own the properties directly. The distinction is one without a difference. The filing of the Certificate of Revival with the Secretary of State, therefore, violated subparagraphs (a), (d) and (e) of this Court's February 1993 Final Judgment. The Certificate of Revival violated subparagraph (d), because its filing with the Secretary of State resulted in the recordation of a document relating to title to the properties. The Certificate violated subparagraph (e), because it represented to the Division of Corporations – and the public – that Bishop Jackson was holding himself out as having an ownership interest in, or control of, the disputed properties in this case. Finally, it violated subparagraph (a), because the Respondents' claim in that Certificate to have control over the corporation that owns the properties, interferes with the Mother Church's quiet title, operation, use, enjoyment and governance of those properties.

12. The aforesaid violations were wilful, and no excuse for them has been shown. Accordingly, those violations constitute a contempt of this Court's February 1993 Superseding Final Order and Judgment by each and all of the Respondents. The plaintiffs' motion is therefore granted, and sanctions will be imposed, as follows:

a. The Respondents are adjudicated in contempt of this Court's Superseding Final Order and Judgment by having filed the Certificate of Revival with the Division of Corporations of the Secretary of State of the State of Delaware.

b. The Certificate of Revival is declared to be null and void *ab initio* and of no legal effect whatever.

c. To eliminate the cloud on the Mother Church's title to its property, the plaintiffs shall cause a copy of this Order to be filed with, and duly recorded by, the office of the Division of Corporations of the Secretary of State.

d. Pursuant to paragraph 3(a) of this Court's July 13, 1995 Order in this action, the plaintiffs are awarded counsel fees and expenses of $18,485, for which the Conference, Bishop Jackson, and K. Kay Shearin, Esquire are jointly and severally liable. Judgment is hereby entered in favor of the plaintiffs and against the Respondents in that amount, which shall be paid by no later than October 8, 1995.

e. A copy of this Order shall be forwarded to Disciplinary Counsel for the Board on Professional Responsibility for that tribunal to take such disciplinary action concerning K. Kay Shearin, Esquire, as it deems appropriate.

/s/ Jack B. Jacobs
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, a Delaware religious corporation, et al.,	)	
Plaintiffs,	)	Civil Action No. 12055
v.	)	
THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, a Delaware corporation, et al.,	)	
Defendants.	)	

ORDER VOIDING DEED, ADJUDICATING CONTEMPT, AND IMPOSING SANCTIONS

The plaintiffs having moved for an order (a) adjudicating the defendants and their attorneys in contempt of this Court's Superseding Final Order and Judgment entered on February 24, 1993 (the "February 1993 Final Judgment"), (b) declaring null and void in part, a certain quitclaim deed dated December 16, 1993 and referenced at Deed Record Vol. 1649, page 77 in the office of the Recorder of Deeds for New Castle County (the "1993 quitclaim deed") and (c) imposing sanctions; and those motions having been briefed and argued, and the Court having determined that the motions are well founded;

WHEREFORE, for the reasons set forth in this Court's Opinion of even date ("Opinion"), **IT IS HEREBY ORDERED** this 13th day of July, 1995, as follows:

1. Insofar as (but only to the extent that) the 1993 quitclaim deed purports to transfer any interest in the property, present or future, of Mother African Union First Colored Methodist Protestant Church in Wilmington, Delaware("Mother Church"), that deed is declared null and void *ab initio* and of no legal effect whatever. To eliminate the cloud on the Mother Church's title to its property, a copy of this Order shall be recorded with the Recorder of Deeds for New Castle County, Delaware, and with the Recorder of Deeds for any other county where the 1993 quitclaim deed has or may have been recorded.

2. The defendants, Bishop Delbert L. Jackson ("Bishop Jackson") and the Conference of African Union First Colored Methodist Protestant Church (the "Conference"), and their attorneys, K. Kay Shearin, Esquire, and Edith H. Hull-Johnson, Esquire, are adjudicated in contempt of this Court's February 1993 Final Judgment, in that:

a. The defendants Bishop Jackson and the Conference violated paragraphs 1(a), 1(d) and 1(e) of the February 1993 Final Judgment by authorizing and causing the recording of the 1993 quitclaim deed; and K. Kay Shearin, Esquire, as the defendants' attorney and as a person acting in concert or participation with them, violated paragraphs 1(a), 1(d) and 1(e) by preparing and causing the recording of the 1993 quitclaim deed.

b. The defendants Bishop Jackson and the Conference violated paragraphs 1(a) and 1(e) of the February

1993 Final Judgment by authorizing the filing of the complaint in Civil Action No. 1674-S (the "Sussex County action") and the prosecution of that action; K. Kay Shearin, Esquire, as the defendants' attorney and as a person acting in concert or participation with them, violated paragraphs 1(a) and 1(e) by assisting the defendants in the preparation and commencement of the Sussex County action; and Edith H. Hull-Johnson, Esquire, as attorney for the Conference and a person acting in concert with the defendants, violated paragraphs 1(a) and 1(e) by filing the complaint in, and otherwise prosecuting, the Sussex County action.

3. As a consequence of the violations determined in paragraph 2 above:

a. The conference, Bishop Jackson and K. Kay Shearin, Esquire, shall be jointly and severally liable to pay the expenses, including reasonable attorneys fees, that the Mother Church has been forced to incur as a result of the aforesaid violations of the February 1993 Final Judgment. The amount of those expenses shall be determined in a subsequent proceeding, and the order directing the payment by a date certain of the amount of such expenses as thus determined, shall have the effect of a money judgment at law.

b. A copy of the Opinion and of this and other Orders implementing the Opinion shall be forwarded to Disciplinary Counsel for the Board on Professional Responsibility for that tribunal to take such disciplinary

action concerning K. Kay Shearin, Esquire, as it deems appropriate.

/s/ Jack B. Jacobs
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE IN AND FOR SUSSEX COUNTY

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,	)	
Plaintiff,	)	Civil Action
v.	)	No. 1674
THE MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,	)	
Defendant.	)	

ORDER

The defendant having moved to dismiss this action, and the motion having been briefed and argued, and the Court having concluded that the motion is well founded;

WHEREFORE, for the reasons set forth in the Court's Opinion of even date, **IT IS HEREBY ORDERED** this 13th day of July, 1995, as follows:

1. The defendant's motion to dismiss is granted, and this action is dismissed with prejudice.

2. The costs of this action shall be paid by the plaintiff.

/s/ Jack B. Jacobs
Vice Chancellor

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, a Delaware religious corporation, et al.,	)	Civil Action No. 12055
Plaintiffs,	)	
v.	)	
THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, a Delaware corporation, et al.,	)	
Defendants.	)	

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,	)	Civil Action No. 1674
Plaintiff,	)	
v.	)	
THE MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH,	)	
Defendant.	)	

MEMORANDUM OPINION

Date Submitted: November 25, 1994
Date Decided: July 13, 1995

Thomas S. Neuberger and Paulette Sullivan Moore, Esquires, Wilmington, Delaware; Attorneys for the Plaintiffs in Civil Action No. 12055

Edith H. Hull-Johnson, Esquire, Georgetown, Delaware; Attorney for Bishop Delbert L. Jackson and the Conference of AUFCMP Church in Civil Action No. 12055, and for the plaintiff in Civil Action No. 1674-S

K. Kay Shearin, Esquire, Wilmington, Delaware; Appearing *pro se*

JACOBS, VICE CHANCELLOR

Before the Court is the latest chapter in this bitterly contested, protracted litigation between two previously affiliated religious organizations – the Conference of African Union First Colored Methodist Protestant Church (the "Conference"), and the Mother African Union First Colored Methodist Church (the "Mother Church") Pending are three motions in these two lawsuits: (1) the motions of the Mother Church (a) to dismiss Civil Action No. 1674-S (the "Sussex County action") and (b) to void a quitclaim deed dated December 16, 1993, and (2) the motion of the plaintiffs in Civil Action No. 12055 for an order adjudicating the defendants and their attorneys in contempt of this Court's February 24, 1993 Superseding Final Order and Judgment.

This is the Opinion of the Court on those motions, which, for the reasons set forth below, will be granted.

I. PROCEDURAL AND FACTUAL BACKGROUND

A. Facts Specific to the Motions

The Conference, which was incorporated in 1941, is a religious association with which various African Methodist Protestant churches are (or were) affiliated. Until it seceded from the Conference in April 1991, the Mother Church was one of those affiliated African Methodist Protestant churches. At all relevant times the Mother Church has owned three properties located in Wilmington, Delaware: the church building, the pastor's house, and a cemetery (collectively, the "contested properties").

In April 1991, Bishop Delbert L. Jackson ("Bishop Jackson"), the presiding official of the Conference, learned that the Mother Church had noticed a meeting of its members to consider seceding from the Conference. In response, Bishop Jackson caused to be executed and recorded, a deed purporting to transfer the contested properties of the Mother Church to the Conference (the "April 1991 deed"). The members of the Mother Church then voted to secede from the Conference. That vote led to a dispute over the ownership of the Mother Church properties covered by the April 1991 deed, and ultimately to the commencement of Civil Action No. 12055 in this Court to resolve that dispute.

On April 18, 1991, the Mother Church and two of its trustees brought Civil Action No. 12055, individually and on behalf of a class of Mother Church members, against Bishop Jackson and the Conference, for a declaratory judgment that the April 1991 deed was void. The plaintiffs also sought implementing injunctive relief. The claim

in Civil Action No. 12055 was that the Mother Church owned exclusively the contested properties purportedly transferred by that deed, and that neither the Conference nor Bishop Jackson had any legal authority to transfer those properties. On April 19, 1991, this Court temporarily restrained the Conference and Bishop Jackson from "interfering with the quiet title, operation, use, enjoyment and governance" of the Mother Church's facilities. *The Mother Church v. The Conference,* Del. Ch., C.A. No. 12055, Jacobs, V.C. (April 19, 1991). One month later, that temporary restraining order was enlarged into a preliminary injunction, based on this Court's preliminary finding that the Mother Church owned the contested properties and that the April 1991 deed purporting to convey those properties to the Conference was void *ab initio. The Mother Church v. The Conference,* Del. Ch., C.A. No. 12055, Jacobs, V.C. (May 15, 1991), Mem. Op. at 15. After the case was tried on the merits, this Court, in a post-trial Opinion, found "nothing that warrants altering the factual findings of the May 15, 1991 Opinion in any respect." Accordingly, the Court entered a final judgment determining that:

> (i) the power to control the disposition of the Mother Church's physical properties is vested solely in the Mother Church's Trustees and its Articles of Association and by-laws, (ii) that power has not been ceded to, or in any way superseded or supplanted by, the Conference or Bishop Jackson, and (iii) none of the properties of the Mother Church have been validly disposed of, or in any form conveyed to, the Conference.

The Mother Church v. The Conference, Del. Ch., C.A. No. 12055, Jacobs, V.C. (April 22, 1992) Mem. Op. at 2.

On February 24, 1993, this Court entered a Superseding Final Order and Judgment (the "February 1993 Final Judgment") that (*inter alia*) (a) reiterated the Court's determination that the Mother Church owned the properties in question, and (b) permanently enjoined the Conference, Bishop Jackson, and their attorneys, agents and persons acting in concert with them from interfering with the Mother Church's quiet title and other ownership rights. *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C. (Feb. 24, 1993). The Delaware Supreme Court affirmed the February 1993 Final Judgment on October 14, 1993, and the United States Supreme Court denied the defendants' petition for certiorari in December 1993. *The Conference v. The Mother Church*, Del. Supr., No. 96 (Oct. 14, 1993), *cert. denied*, 114A S.Ct. 637 (1993).

On December 16, 1993 – only days after the United States Supreme Court had denied certiorari – Bishop Jackson, on behalf of the Conference and without notice to the plaintiffs or leave of this Court, executed a second quitclaim deed. That deed purported to transfer to a third party the same Mother Church properties previously adjudicated to be owned by the Mother Church (the "1993 quitclaim deed"). The 1993 quitclaim deed was prepared and notarized by K. Kay Shearin Esquire, counsel for the defendants in Civil Action No. 12055, who caused that deed to be recorded on December 27, 1993. (1993 Quitclaim Deed: 11/7/94 Oral Argument Transcript ("O.A. Tr."), at 49, 52, 56-57).

In the 1993 quitclaim deed, the Conference purported to "remise, release, and quitclaim" any present or future property interest it had within the State of Delaware to St. John's A.U.F.C.M.P. Church ("St. John's"), as trustee for the Peter Spencer Historical Society, an unincorporated private foundation in Pennsylvania (the "Spencer Society"). Included among the several recited property interests of the Conference being transferred were the Mother Church's properties in Wilmington, Delaware, and all "associated premises."[1] Thus, the Conference, in the 1993 quitclaim deed, purported to transfer to the Spencer Society its interest in the same properties that this Court and the Delaware Supreme Court had previously and finally determined were owned exclusively by the Mother Church – and *not* the Conference. (*Id.* at 49-50, 53).

Neither the 1993 quitclaim deed nor its recordation were disclosed to the Mother Church, its counsel, or this Court. Five months later, in May 1994, at the direction of Bishop Jackson, the Conference filed the Sussex County action for a judicial determination that the Conference owned the contested properties by virtue of a contract entered into in June 1990. Why the Sussex County venue – which has no nexus or connection with the Mother Church, its properties, or the Conference – was chosen, has never been explained. And why the Sussex County

---

[1] The 1993 quitclaim deed recites that the Conference was conveying "all the interests in real property in the State of Delaware [the Conference] now has or may acquire in the future . . . including but not limited to the premises known by the following names:" What then follows is a list of churches whose property is being conveyed, including "Mother A.U.F.M.C.P. Church on Franklin Street in Wilmington."

complaint did not disclose that the properties that were the subject of the Conference's contract claim had been deeded to the Spencer Society five months before, was also never explained.

Bishop Jackson retained attorney Edith H. Hull-Johnson, Esquire, to bring the Sussex County action on behalf of the Conference. Ms. Hull-Johnson was first contacted for that purpose by Ms. Shearin, counsel for the defendants in Civil Action No. 12055. Ms. Shearin conferred with Ms. Hull-Johnson on several occasions about the theory upon which the Sussex County action would be predicated, and made available to Ms. Hull-Johnson her files in Civil Action No. 12055, which Ms. Hull-Johnson reviewed. Ms. Hull-Johnson was also shown the 1993 quitclaim deed. (O.A. Tr. 11/7/94 at 48, 68). Thus, it is undisputed that at the time the Sussex County action was filed, both Ms. Hull-Johnson and Ms. Shearin were fully aware of the injunctive and other provisions of this Court's February 1993 Final Judgment. (*Id.* at 60).

The crux of the Sussex County complaint is that in a June 6, 1990 contract, the Mother Church agreed to be bound by certain rules promulgated in the *Book of Discipline*. (Complaint in C.A. 1674-S at ¶ 6; O.A. Tr. 11/7/94 at 80). One of those rules (the Conference alleges) was that all real property would be jointly titled in the Conference and the Mother Church, but would belong to the Conference if the Mother Church seceded from the Conference. (*Id.*). In its complaint the Conference prayed for an order compelling the Mother Church (i) to convey to the Conference all of the Mother Church's real and personal property interests at the time it seceded from the Conference in 1991, and (ii) to change its corporate name

to eliminate any reference to "African Union First Methodist Protestant," or "African Union First Colored Methodist Protestant" Church. (*Id.* at ¶¶ A-C).

Upon learning of the filing of the Sussex County action, the Mother Church responded by moving in Civil Action No. 12055 for a determination that by filing the Sussex County action, the Conference and Bishop Jackson were in civil contempt of this Court's February 1993 Final Judgment. (At that point the Mother Church was not aware of the December 1993 quitclaim deed.) On the limited record then before it, the Court denied that motion without prejudice, with leave to the Mother Church to renew the motion for good cause. *The Mother Church v. The Conference*, Del Ch., C.A. No. 12055, Jacobs, V.C. (July 6, 1994) (Order Enforcing Superseding Final Order and Judgment).

The Mother Church renewed its motion to hold the Conference and Bishop Jackson in contempt, and sought that relief against attorneys Shearin and Hull-Johnson as well. The basis of the renewed motion was that by filing the Sussex County action, those parties and their attorneys violated this Court's February 1993 Final Judgment. The Mother Church also moved to dismiss the Sussex County action on *res judicata* grounds. Later, the Mother Church learned during the course of those proceedings that the Conference had executed and recorded the 1993 quitclaim deed The Mother Church then moved separately for orders voiding that deed and holding Bishop Jackson, the Conference, and attorney Shearin in contempt, on the ground that the recording of the 1993 quitclaim deed violated the February 1993 Final Judgment. These are the motions addressed in this Opinion.

B. Other Pertinent Procedural History

To place these motions in proper perspective, it is necessary to recount other events in the tortuous and complex procedural history of this case. That history demonstrates that the Conference, Bishop Jackson, and Ms. Shearin have established a pattern of bringing litigation in other courts, and taking other actions intended to interfere with this Court's jurisdiction and to avoid compliance with this Court's orders.

Shortly before this Court granted its May 15, 1991 preliminary injunction in Civil Action No. 12055, the defendants caused St. Paul's Church (a Church-member of the Conference located in Washington, D.C.) to file a complaint in the United States District Court for the District of Delaware, alleging that this Court's April 14, 1991 temporary restraining order violated the Federal Civil Rights Act and the United States Constitution. St. Paul's Church, represented by Ms. Shearin, sought a preliminary injunction to prevent the Mother Church from continuing to prosecute Civil Action No. 12055 in this Court. Then-District Judge Roth denied the motion for a preliminary injunction, and admonished the plaintiff and its attorney, Ms. Shearin, to consider whether they were in violation of this Court's temporary restraining order. *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C. (April 22, 1992), Mem. Op. at 18-19. That admonition went unheeded. One year later the District Court dismissed the federal complaint on abstention grounds. *St. Paul's Church v. Comegys, et al.*, Civil Action No. 91-272-SLR, Robinson, J. (March 24, 1992). The United States Court of Appeals for the Third Circuit

affirmed that dismissal. *St. Paul's Church v. Comegys, et al.*, 3rd Cir. No. 92-7149, 1992 U.S. App. LEXIS 31527 (Oct. 9, 1992).

During the course of the primary litigation (Civil Action No. 12055), the plaintiffs accused the Conference and Bishop Jackson of hindering congregants of the Mother Church in their use of the church building for funeral services, and urged this Court to determine that that conduct violated the injunctive provisions of the February 1993 Final Judgment. This Court denied the plaintiffs' contempt motion on technical grounds, but it did conclude that the Conference's counsel, Ms. Shearin, had taken materially inconsistent positions before the Court in violation of Court of Chancery Rule 11. As a consequence, the Court ordered Ms. Shearin and the defendants to pay the Mother Church's costs and attorney's fees, which, together with the costs previously awarded, totaled $10,260. The Court also forwarded a copy of its Opinion to the Board of Professional Responsibility for such action as the Board deemed appropriate. *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C. (May 20, 1992). The Delaware Supreme Court affirmed those orders. *The Conference v. The Mother Church*, Del Supr., No. 96, 1993 (Oct. 14, 1993) (Order).

The defendants did not, however, pay those fees and costs. To enforce obedience to its earlier orders, this Court, on motion of plaintiffs' counsel, entered an order on July 6, 1994 9a) directing that the previously-awarded costs and attorney's fees be paid to the Mother Church by July 15, 1994, and (b) making Bishop Jackson jointly and severally liable to pay that obligation. *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C.

(July 6, 1994) (Order Enforcing Superseding Final Order and Judgment).

Neither the Conference, Bishop Jackson, nor Ms. Shearin compiled with the July 6, 1994 Order either. Accordingly, the Mother Church commenced execution process against Bishop Jackson's property, and in response, the Conference and Bishop Jackson appealed the July 6, 1994 Order and moved for a stay of execution. This Court denied the motion. *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C. (Oct. 13, 1994) (Letter Op.). The Conference then moved for a stay pending appeal from the Delaware Supreme Court, which granted the stay motion on condition that the $11,000 of unpaid costs, fees and accrued interest be deposited as a supersedeas bond with the Clerk of the Supreme Court. *The Conference v. The Mother Church*, Del Supr., No. 297, 1994 (Oct. 19, 1994) (Order). Pursuant to that Supreme Court Order, Bishop Jackson posted an $11,000 cash bond.

On March 3, 1995, the Delaware Supreme Court affirmed this Court's July 6, 1994 Order Enforcing Superseding Final order and Judgment, *The Conference v. The Mother Church*, Del Supr., No. 297, 1994 (March 3, 1995) (Order), and denied the Conference's motion for a rehearing *en banc*. *The Conference v. The Mother Church*, Del. Supr., No. 297, 1994 (May 8, 1995) (Order). This court subsequently denied the defendants' motion to stay execution process pending appeal to the United States Supreme Court. *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C. (March 10, 1995) (Order).

Resisting their Supreme Court-ordered obligation to pay the deposited $11,000 supersedeas bond to the plaintiffs, and continuing their pattern of contumacious refusal to accept the determinations of this Court, the Conference filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware on March 20, 1995. In that proceeding the defendants' counsel took the position that the filing of the Bankruptcy petition automatically stayed all proceedings pending in this Court and the Supreme Court, including (i) the contempt motions, (ii) the motions to dismiss the Sussex County action and to void the 1993 quitclaim deed, and (iii) the Delaware Supreme Court's directive to pay the $11,000 supersedeas bond to the plaintiffs in Civil Action No. 12055. By letter this Court advised counsel that it did not consider the pending motions to be covered by the automatic stay, because they concerned parties other than the bankrupt (the Conference) and did not implicate any asset of the bankrupt.

On April 3, 1995, the Conference and Bishop Jackson then moved in the Bankruptcy Court for orders enforcing the automatic stay and holding the Mother Church and this member of the Court of Chancery in contempt of the automatic stay order. On April 28, 1995, the Bankruptcy Court denied those motions. It also determined that the filing of the Chapter 7 petition was an "abuse of the bankruptcy process," that "achieve[d] no bankruptcy law objective and . . . only served to delay and frustrate legitimate state court proceedings." *The Conference of African Union First Colored Methodist Protestant Church*, Case No. 95-308, Walsh, J. (Bankr. D. Del., April 28, 1995). On

that basis, the Bankruptcy Court dismissed the entire bankruptcy proceeding *sua sponte*.[2]

II. MOTION TO DISMISS THE SUSSEX COUNTY ACTION

I first address the Mother Church's motion to dismiss the Sussex County action on the ground that that action is barred by the doctrines of *res judicata* and collateral estoppel, and by Court of Chancery Rule 13(a). I conclude, for the reasons now discussed, that the motion is well founded.

The basic legal principles are not disputed. As commonly articulated, the *res judicata* doctrine bars a second action that involves the same parties or their privies and the same cause of action in a prior lawsuit, where the claim in the prior lawsuit was litigated to a final judgment rendered by a court of competent jurisdiction. *Epstein v. Chatham Park, Inc.*, Del. Super., 153 A.2d 180, 184 (1959); *Div. of Child Support Enf. v. Myrks*, Del. Supr., 606 A.2d 748, 750 (1992). The *res judicata* doctrine applies not only to the claims that were raised, but also to claims that could have been raised in the first action. *Myrks*, 606 A.2d at 750.

---

[2] Thereafter, on May 22, 1995, the Conference and Bishop Jackson requested that this particular member of the Court recuse himself, claiming that the Court could not impartially consider the pending motions because the Conference and Bishop Jackson had sought to have him held in contempt of the bankruptcy automatic stay. The respondents' *pro forma* motion, a one page document without factual or legal support, is without merit and is hereby denied.

Functionally similar to but legally distinguishable from the doctrine of *res judicata* is Court of Chancery Rule 13(a).[3] That Rule requires that a defendant in a civil action assert all compulsory counterclaims therein, and bars any unasserted compulsory counterclaims from being brought as direct claims in any subsequent lawsuit. Wright Miller & Kane, Federal Practice and Procedures, Civil 2d § 1409. Both the *res judicata* doctrine and Rule 13(a) serve the public policy goals of judicial economy and repose by putting an end to litigation once a party had had is day in court and full opportunity to present its case. *See Epstein*, 153 A.2d at 184; Wright, Miller & Kane, *supra*, at § 1403. I find the claim asserted in the Sussex County action to be precluded by operation of *res judicata* and Rule 13(a).[4]

In the original action (Civil Action No. 12055), the Mother Church and the class, as plaintiffs, successfully established the Mother Church's ownership of the properties that Bishop Jackson purportedly transferred to the Conference in the April 1991 deed. *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C. (April 22, 1992) Mem. Op. at 1. This Court, in its April 22, 1992 post-trial Opinion, finally determined that the Mother Church owned the contested real estate, and

---

[3] Chancery Court Rule 13(a) pertinently provides:

> A pleading shall state as a counterclaim any claim, which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. . . .

[4] That conclusion makes it unnecessary to address the Mother Church's collateral estoppel argument.

embodied that determination in its Amended Final Order and Judgment and in its Superseding Final Order and Judgment. *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C. (May 20, 1992); *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C. (Feb. 24, 1993). In its Sussex County action, the Conference now claims that the Mother Church had entered into a contract on June 3, 1990 that required the Mother Church to convey its real property to the Conference when it seceded from the Conference on April 9, 1991. (Complaint at ¶¶ 6-7).

Although the causes of action in the two lawsuits are different, both actions involve the same property, the same parties, and the same ultimate issue, which is who owns the contested properties. That issue was specifically and finally adjudicated by this Court in Civil Action No. 12055. It is manifest that by bringing the Sussex County action, the Conference is attempting to relitigate that question. The Sussex County contract claim was known to the defendants at the inception of Civil Action No. 12055, and could have been raised as a defense. Because *res judicata* extends to all claims that might have been raised and decided in the first suit as well as to those claims that actually were decided, the claim in the Sussex County action is *res judicata* and is therefore barred. *Myrks*, 606 A.2d at 750.

To establish that a claim is barred as *res judicata*, a defendant must show that: (1) the original court had jurisdiction over the subject matter of the original action and the parties to it; (2) the parties to the original action were the same as the parties or their privies in the case at bar; (3) the cause of action in the original case, or the

issues necessarily decided therein, were the same as in the case at bar; (4) the prior action was decided adversely to the plaintiff in the case at bar; and (5) the prior action was finally determined. *Myrks*, 606 A.2d at 750; *Bradley v. Div. of Child Support Enf.*, Del. Supr., 582 A.2d 478, 480 (1990).

All of these requirements are met here. This Court's jurisdiction in Civil Action No. 12055 is undisputed, and the parties to the Sussex County action were parties to Civil Action No. 12055. That prior action and the property ownership issue that was its subject were decided adversely to the Conference (the plaintiff in the Sussex County action), and the judgment in Civil Action No. 12055 has been final since December 1993.[5]

The only respect in which the Sussex County action differs from the prior action is that the Conference is now asserting an affirmative claim predicated upon a new *theory* concerning the same basic property ownership issue decided adversely to it in Civil Action No. 12055. That theory is based on an alleged June 1990 "contract"

---

[5] The Conference argues that it is "questionable" whether the Judgment in C.A. 12055 is final, because the Mother Church "reopened" it by moving this Court to find the Conference in contempt for not paying the judgment against it, thereby "destroying" the judgment's finality. It is difficult to characterize that argument temperately. On the issue of who owns the property in question, this Court entered final judgment on the merits in the Mother Church's favor on April 22, 1992. *The Mother Church v. The Conference*, Del. Ch., C.A. No. 12055, Jacobs, V.C. (April 22, 1992). The Mother Church's contempt motion sought to enforce that Judgment, not to "reopen" it or question its finality.

that, given its alleged date of execution, must have been known to the Conference and Biship Jackson at the time Civil Action No. 12055 was commenced in April 1991. That "contract" theory, if valid, would have operated as a complete defense to the Mother Church's ownership claim in the prior action. The Conference (and the other defendants) chose not to assert that theory as a defense; instead, they "held back" that defense and litigated the property ownership issue to a conclusion on other grounds. Now that that issue has been conclusively adjudicated adversely to it in three different courts, the Conference seeks to litigate its contract theory as an independent claim in the Sussex County action. By not raising that claim as a defense in Civil Action No. 12055, the Conference is precluded from raising it now in the guise of an affirmative claim. *Myrks*, 606 A.2d at 750; *Univ. of New Hampshire v. April*, N.H. Supr., 347 A.2d 446, 450-51 (1975); *Massari v. Einsiedler*, N.J. Supr., 78 A.2d 572, 576-77 (1951).[6]

---

[6] The *res judicata* doctrine has traditionally been applied to bar a claim that could have been, but were not, asserted as a defense in prior actions that were finally determined. A valid judgment finally negatived every defense that was or might have been raised, even where, as here, the defense is actually raised by way of an affirmative claim for relief in the form of a different cause of action in a subsequent proceeding. *Univ. of New Hampshire v. April*, N.H. Supr., 347 A.2d 446, 450-51 (1975).

Some courts and the Restatement of Judgments have adopted the position that the failure to raise a claim as a defense in one action does not preclude a party from raising the claim affirmatively in a later action, so long as the claim is not precluded by collateral estoppel. *See, e.g., Rowland v. Harrison*, Md. App., 577 A.2d 51, 57 (1990); *Restatement of Judgments* (Second), at § 22. Those authorities do not change the result

Even if (*arguendo*) the Conference was not required to assert its contract claim as an affirmative defense in Civil Action No. 12055, it plainly was required to assert that claim as a counterclaim under Chancery Court Rule 13(a). That is because the contract claim arose out of the same "transaction or occurrence that is the subject matter of the opposing party's claim," and was therefore a compulsory counterclaim that should have been asserted during the pendency of the prior action.

The Conference argues that the Sussex County contract claim was not a compulsory counterclaim in Civil Action No. 12055, because (i) when that action was filed in April 1991, the Conference held "legal title" to the contested real estate and therefore had no ripe claim for specific performance of the June 1990 contract, and (ii) the two claims arose out of different "transactions," in that the Mother Church's claim in Civil Action No. 12055 arose from the Conference's execution and recording of the April 1991 quitclaim deed, while the Conference's

---

reached here, however, because the subsequent affirmative claim is still barred where "[t]he relationship between the counterclaim and the plaintiff's claim is such that a successful prosecution of the second action would nullify the initial judgment or would impair rights established in the initial action." *Rowland*, 577 A.2d at 57; *Restatement*, *supra*, at § 22(2)(b). Such would be the case here. Were the Conference to prevail on its Sussex County contract claim, that result would necessarily nullify this Court's earlier determination that the contested properties are owned by the Mother Church, and were not validly conveyed to the Conference. In these circumstances, "the principle of finality requires preclusion" of the second action. Restatement, *supra*, at § 22(2)(b), cmt. f.

Sussex County contract claim arose from the negotiation and execution of the June 1990 contract.

Those arguments give new meaning to the term "meritless." The Conference never had valid legal title to the contested properties, because the validity of the deed that formed the basis for its claim of title was disputed throughout the pendency of Civil Action No. 12055, and was preliminarily and finally determined to be void *ab initio*. The Sussex County "contract" claim (if it ever existed) was ripe at the time Civil Action No. 12055 was filed and could have been asserted as a counterclaim in that action.

Equally flawed is the argument that the contract claim did not arise out of the same "transaction or occurrence" as the ownership claim that was decided in Civil Action No. 12055. Although no Delaware cases have yet spoken to the issue, the decisions generally hold that the term "transaction or occurrence" as used in Rule 13(a) is to be liberally interpreted. *See* Wright Miller & Kane, *supra*, at § 1410. The test applied by federal courts and a majority of state courts is whether there is a "logical relationship" between the original action and the subsequent claim. *Moore v. New York Cotton Exch.*, 270 U.S. 593, 610 (1926); *Great Lakes Rubber Corp. v. Herbert Cooper Co., Inc.*, 3rd Cir., 286 F.2d 631, 633-34 (1961); Wright Miller & Kane, *supra*, at § 1410. This case easily meets that or any other test. That contract claim and the claim in Civil Action No. 12055 both involve the bedrock question of who owns the contested properties. In every meaningful sense the contract claim that the Conference now seeks to assert in the Sussex County action is logically related to

the Mother Church's claim for declaratory and injunctive relief adjudicated in Civil Action No. 12055.

Because the claim in the Sussex County action existed at the time of the original action and arose out of the same transaction or occurrence as Civil Action No. 12055, it was a Rule 13(a) compulsory counterclaim in that action. That claim was not asserted in Civil Action No. 12055, and the Conference is barred under Rule 13(a) from asserting it now.

Because the contract claim is barred as *res judicata* and by Rule 13(a), the Sussex County action will be dismissed.

III. MOTION TO VOID THE 1993 QUITCLAIM DEED

The Mother Church also requests this Court to declare the 1993 quitclaim deed void *ab initio*, on the basis that the Conference had no valid legal interest in its properties, with the result that the 1993 quitclaim deed constitutes an unjustified cloud on the Mother Church's title that requires judicial removal. I agree. However, that relief cannot be granted without considering the interest of the grantee, the Spencer Society, which is not a party to these proceedings.[7] That concern is also significant because the 1993 quitclaim deed purports to transfer properties of other churches in addition to the Mother Church.

---

[7] Although the actual grantee on the 1993 quitclaim deed is St. Johns, as trustee for the Spencer Society, the Spencer Society is the true beneficial owner of whatever property interest was conveyed by that deed.

Chancery Court Rule 19 governs the joinder of persons needed for a just adjudication. Rule 19(b) pertinently provides:

> [T]he Court shall determine whether in equity and good conscience the action should proceed among the parties before it. . . . The factors to be considered by the Court include . . . to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties . . . [and] the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided. . . .

Having considered this case in light of those standards, I conclude that "equity and good conscience" do not require that the Spencer Society be made a party to these proceedings to enable this Court to void the 1993 quitclaim deed insofar as it relates to the Mother Church's properties.

First, the Spencer Society is a non-party to these proceedings by its own deliberate choice. The record establishes that the Spencer Society was aware of the earlier proceedings in Civil Action No. 12055, including this Court's determination that the contested properties were rightfully owned by the Mother Church. Indeed, Ms. Shearin represented to the Court that counsel for the Spencer Society had been directly involved in the discussions concerning how to draft the 1993 quitclaim deed in light of this Court's February 1993 Final Judgment. (O.A. Tr. 11/7/94 at 60). Ms. Shearin also stated that under the terms of the 1993 quitclaim deed, the only interest in the contested properties the Spencer Society had received

was the right to litigate the contract claim; and that although the Spencer Society could have chosen to bring the Sussex County action to enforce that contract claim on its own behalf, a "deal" was struck whereby the Spencer Society provided the funds and the Conference undertook to bring the litigation. (*Id.* at 57-58). Finally, nothing of record establishes (and no party argues) that the Spencer Society's interests in this litigation have not been adequately represented by the Conference.

Thus, the Spencer Society: (a) had actual notice of the legal circumstances under which it received the 1993 quitclaim deed; (b) affirmatively decided that the Conference (and not it) would prosecute the Sussex County action to pursue the contract claim; (c) agreed to fund the Sussex County action; and (d) thereby agreed that its interests would be represented by the Conference. In these circumstances, neither the Conference nor the Spencer Society can be heard to object that the latter is an indispensable party in whose absence this motion cannot be decided.

Second, the Court is capable of crafting a remedy that will affect only that portion of the 1993 quitclaim deed that concerns the Mother Church properties. Specifically, the Court can declare void *ab initio* that part of the 1993 quitclaim deed which purports to transfer the properties of the Mother Church. Such narrowly tailored relief would leave the remaining provisions of the deed intact, leave unaffected whatever interest the Spencer Society may have in the other transferred properties, and thereby avoid any undue prejudice to the Society.

Accordingly, an order will be entered (i) declaring the 1993 quitclaim deed void *ab initio*, insofar as it purports to transfer any interest in the properties of the Mother Church, and (ii) directing that the Order be recorded with the Recorder of Deeds for the appropriate county or counties.

IV. MOTION FOR CONTEMPT

A. The Legal Standard

The Mother Church contends that the Conference, Bishop Jackson, Ms. Shearin, and Ms. Hull-Johnson should be found in contempt of the February 1993 Final Judgment in Civil Action No. 12055, for having violated paragraphs (1)(a), 1(d), and 1(e) of that Judgment. They claim that the acts constituting those violations were (1) the preparation, execution and recording of the 1993 quitclaim deed, and (2) the filing and prosecution of the Sussex County action. I conclude, for the reasons now discussed, that the contempt motion is well founded and should be granted.[8]

To establish civil contempt, the movants "must show that the defendants violated an order of this Court, and that the sanction they seek is coercive or remedial in nature." *The Mother Church v. The Conference*, C.A. No. 12055, Jacobs, V.C. (April 22, 1992) Mem. Op. at 15. The

---

[8] The plaintiffs have also moved for sanctions pursuant to Chancery Court Rule 11, based on the same conduct that is the subject of the contempt motion. Because the disposition of the contempt motion moots the Rule 11 issue, the Court does not reach the Rule 11 motion.

movants are not required to prove that the violation was wilful or intentional. *State of Delaware Dept. of Serv. for Children, Youth and their Families v. Cedars Academy,* Del. Ch., C.A. No. 1399-S, Allen, C. (October 30, 1989) Mem. Op. at 4, citing *McComb v. Jacksonville Paper Co.,* 336 U.S. 187, 191 (1949). That is, if the respondents' actions are violative of this Court's Order, their state of mind is immaterial for purposes of contempt adjudication.[9]

B. The Violations of the February 1993 Final Judgment

Paragraph 1 of this Court's February 1993 Final Judgment pertinently provides in subsections (a), (d), and (e), as follows:

* * *

> (a) The defendants, and their agents, employees, servants, officers, attorneys, successors, assigns, and all others acting in concert or participation with them . . . are hereby enjoined and restrained from interfering with the quiet title, operation, use, enjoyment and governance of the properties of the Mother Church, its duly elected trustees, its members, and their successors. . . .
>
> * * *
>
> (d) The defendants and all others identified in paragraph (a) above are enjoined and restrained from recording in the future any further deeds,

---

[9] The intentional or wilful nature of their acts may, however, be considered in determining the appropriate sanction. See Part IV C, *infra* of this Opinion.

> encumbrances, or other documents relating to the title to the properties identified in paragraph (a) hereof.
>
> * * *
>
> (e) The defendants, and all others identified in paragraph (a) above, are hereby enjoined and restrained from (i) holding themselves out as having any ownership interest or control in the above identified properties and any other property of the Mother Church. . . .

Despite those injunctions, (1) Bishop Jackson executed, and Ms. Shearin drafted, witnessed, and recorded on behalf of the Conference, the 1993 quitclaim deed purporting to transfer the Conference's interest in the contested properties that this Court had conclusively adjudicated belonged to the Mother Church; (2) Bishop Jackson, assisted by Ms. Shearin, caused the Conference to commence and prosecute the Sussex County action; and (3) Ms. Hull-Johnson signed and filed the complaint in the Sussex County action as counsel of record for the Conference. For the reasons now discussed, I conclude that those acts violated paragraphs 1(a), 1(d) and 1(e) of the February 1993 Final Judgment.

First, the recording of the 1993 quitclaim deed by the Conference, Bishop Jackson, and Ms. Shearin clearly violated paragraphs 1(a), 1(d), and 1(e) of the February 1993 Final Judgment. Respectively, those paragraphs enjoined "the defendants, their agents, . . . officers, . . . attorneys, and all others acting in concert or participation with them," from "interfering with the quiet title" to the contested properties (¶ 1(a)), "recording . . . any further deeds . . . relating to the title to" the contested properties

(¶ 1(d)), and "holding themselves out as having any ownership interest" in the contested properties (¶ 1(e)). The 1993 quitclaim deed was a "further" deed that held the Conference out as having an ownership interest in the contested properties and "[related] to the title to" those properties. The recording of that deed, therefore, necessarily interfered with the Mother Church's quiet title to those properties, and also was a specifically prohibited act because the deed "[related] to the title" to the contested properties. The persons enjoined from engaging in those activities included (i) "the defendants," *i.e.*, the Conference and Bishop Jackson, who was the officer that controlled the actions of the Conference and caused the Conference to be the grantor on the 1993 quitclaim deed; and (ii) the defendants' attorney, *i.e.*, Ms. Shearin.

These respondents argue that these acts should not be deemed a contempt. First, they contend that it would have been unreasonable for the February 1993 Final Judgment to be interpreted as prohibiting them from recording any deed, or from holding themselves out as having any ownership interest, whatever the circumstances. Suppose (the respondents rhetorically hypothesize) the Conference purchased the properties from the Mother Church. Surely, then, the Conference would have been entitled, notwithstanding the Judgment, to record a deed conveying title to the properties and otherwise to hold itself out as having an ownership interest in the properties. Second, these respondents argue that nothing in the 1993 quitclaim deed specifically claims that the Conference had title or any specific ownership interest in the contested properties. Rather, the deed transferred only

the "right to litigate" the contract claim asserted in the Sussex County action.

Neither argument has the slightest merit. Indeed, the respondents' hypothetical scenario demonstrates the utter demerit of their position and underscores why an adjudication of contempt is compelled in this case. That is because even under the respondents' hypothetical scenario wherein the Conference purchases the Mother Church property, the Conference would still have been required to request the Court to relieve it from the February 1993 Final Judgment before the Conference could lawfully proceed to record a deed. Although an agreement to purchase the property from the Mother Church would afford the Conference a valid basis to request (and for the Court to grant) such relief, that circumstance would not excuse the Conference from that Court-imposed obligation. That the Conference would have been subject to that duty even in its hypothetical scenario involving totally benign facts, only underscores the reprehensible nature of these respondents' conduct in this case, where (i) they had *no* basis to seek relief from the February 1993 Final Judgment, (ii) Bishop Jackson, the Conference, and Ms. Shearin proceeded nonetheless to disregard the injunctive provisions of that Judgment and record the 1993 quitclaim deed without informing the Mother Church or the Court, and (iii) they did so despite this Court's prior adjudication that the Conference had *no* interest in the contested properties and despite its injunction prohibiting that specific conduct. Those undisputed facts lead me to conclude that the violation of this Court's February 1993 Final Judgment by these respondents was deliberate, calculated, and wilful.

The Conference's characterization of the 1993 quitclaim deed as the transfer of a "right to litigate" the contract claim is basically a manipulation of words designed to obscure the contemptuous character of its conduct. The deed recites that the Conference was conveying to the Spencer Society "all the *interests* in real property in the State of Delaware" that "[the Conference] now has or may acquire in the future," including the premises of "Mother A.U.F.C.M.P. Church on Franklin Street in Wilmington." (emphasis added). By recording that deed, the respondents (other than Ms. Hull-Johnson) clearly caused the Conference to "hold [itself] out as having [an] ownership interest . . . in the [contested] properties and any other property of the Mother Church," in violation of paragraph 1(e) of the February 1993 Final Judgment; and "[interfered] with the quiet title . . . of the properties of the Mother Church," in violation of paragraph 1(a) of the Final Judgment. Characterizing the deed as a transfer of a "right to litigate" does not alter the basic fact that the Final Judgment expressly prohibited both acts.

Second, the Conference and Bishop Jackson also violated paragraphs 1(a) and 1(e) of the February 1993 Final Judgment by authorizing the filing and prosecution of the Sussex county action. By signing and filing the complaint in that action, Ms. Hull-Johnson, as the Conference's attorney and agent, violated those provisions as well, as did Ms. Shearin, by assisting Bishop Jackson and Ms. Hull-Johnson in the preparation of that complaint. As earlier noted, paragraph 1(a) prohibited the Conference and its employees, attorneys and/or agents from interfering with the Mother Church's quiet title to the contested

properties; and paragraph 1(e) prohibited those persons from holding themselves out as having an ownership interest in those properties. The filing of the Sussex County lawsuit was a most forceful statement of the Conference's claim of entitlement to ownership of the Mother Church properties. By operating as a notice of *lis pendens*, that lawsuit clouded the title to those properties as well.

To express the matter differently, by filing a lawsuit that sought to compel the Mother Church to convey its properties to the Conference, and by forcing the Mother Church to respond to that lawsuit to defend its previously adjudicated ownership rights, Bishop Jackson, the Conference, Ms. Shearin and Ms. Hull-Johnson interfered with the Mother Church's quiet title, which necessarily would remain clouded until the lawsuit was resolved. That the claim asserted in the Sussex County action was barred as *res judicata* aggravated the violation, as it confirms that the claim underlying the cloud on title had no legal basis. Therefore, I find that the Conference and Bishop Jackson, as defendants in Civil Action No. 12055, and Ms. Shearin and Ms. Hull-Johnson[10] as their

---

[10] I recognize that Ms. Hull-Johnson stands on a different equitable footing, because unlike the other respondents, she did not violate this Court's Final Judgment wilfully or intentionally. Rather, she did so in the apparent but mistaken belief that the filing of the Sussex County action would not violate this Court's February 1993 Final Judgment. As previously noted, subjective intent is not a legal prerequisite to a finding of contempt. But, more fundamentally, the injunctive provisions of the February 1993 Final Judgment were so manifestly applicable in the circumstances as to be beyond creative "interpretation." Indeed, the clear intent and effect of the Judgment was to eliminate any

attorneys and agents, violated paragraphs 1(a) and 1(e) of this Court's February 1993 Final Judgment by preparing, filing and prosecuting the Sussex County action.

* * *

For the reasons set forth above, the Conference, Bishop Jackson, Ms. Shearin, and Ms. Hull-Johnson are adjudicated in contempt of this Court's February 1993 Final Judgment. Having made that determination, I consider the question of appropriate sanctions.

C. The Appropriate Sanctions

As sanctions, the Mother Church seeks (1) an award of costs and attorneys' fees, and (2) additional sanctions to enforce the respondents' future compliance with the Final Judgment.

---

need for interpretation by imposing an absolute duty upon the parties and their attorneys *not* to take any action that clouded the title to the properties adjudicated as belonging to the Mother Church. If Ms. Hull-Johnson believed in good faith that the Sussex County action would not violate the February 1993 Final Judgment, then her duty as an attorney was to request this Court, on notice to the Mother Church, to grant relief from that Judgment. The clear language of that Judgment, coupled with the fact that the Sussex County action concerned the identical properties the ownership of which adjudicated adversely to the Conference in Civil Action No. 12055, was a red flag that should have alerted any attorney considering whether to bring the Sussex County action, to the hazards of proceeding without the prior permission of this Court.

1. Costs and Attorney's Fees

The Mother Church contends that it is appropriate and just to require the respondents to pay the additional costs and attorneys fees that they forced the Mother Church to incur as a result of their violations of the Final Judgment. I agree. The actions by the respondents that required the Mother Church to incur such costs were not taken in good faith.[11] Therefore, the Conference, Bishop Jackson, and Ms. Shearin will be ordered to pay the movants' costs and attorneys fees resulting from their violations of the February 1993 Final Judgment, in an amount to be determined in a subsequent proceeding in Civil Action No. 12055. Those respondents shall be held jointly and severally liable to pay those costs by a date certain, and the order directing payment will have the effect of a money judgment against those persons.

2. Enforcing Future Compliance with the Court's Order

The Mother Church also argues that monetary sanctions alone cannot ensure compliance with the Court's Final Judgment, because Ms. Shearin has stated in open court that both she and the Conference are "judgment-proof," and Bishop Jackson has stated that he feels obligated to bring lawsuits on behalf of the Conference until "justice prevails." Given those expressions, the Mother Church contends that the only remedy likely to assure the

---

[11] That conclusion does not apply to Ms. Hull-Johnson, whose recent involvement in this dispute precludes any finding that her conduct was other than an error of judgment.

respondents' future compliance with the Final Judgment is incarceration.

I cannot agree, at least at this stage. This Court does have the power to "enforce obedience to its judgments by imprisonment." 10 *Del. C.* § 370. However, an order voiding that part of the 1993 quitclaim deed purporting to transfer the Mother Church's properties would obviate any need to exercise that power, because once the deed is voided no need will exist to enforce compliance with the February 1993 Final Judgment in that regard. Any additional sanctions aimed at enforcing compliance with the Court's Final Judgment would be based on speculation that the respondents will violate its other provisions in the future.

I am not oblivious of the fact that the Conference, Bishop Jackson, and Ms. Shearin have historically exhibited a pattern of violating this Court's commands. It is also true that those respondents have yet to pay the monetary sanctions earlier imposed upon them in Civil Action No. 12055. Nonetheless, I am persuaded that as far as Ms. Shearin is concerned, the appropriate sanction at this stage is for the Court to transmit this Opinion to the Disciplinary Counsel for the Board of Professional Responsibility. It will be up to that tribunal to consider appropriate disciplinary measures against Ms. Shearin, whose pattern of behavior in this case raises serious questions as to her willingness to abide by the standards of conduct expected of attorneys who practice before this Court. As for Bishop Jackson, the Court admonishes him to refrain from any further violations of this Court's February 1993 Final Judgment, or its other orders, either individually or as the presiding official of the Conference.

Should Bishop Jackson fail to heed this admonition, this Court will then consider taking action under 10 *Del. C.* § 370 and referring the matter to the Attorney General for proceedings under 11 *Del. C.* § 1271(3).[12]

Finally, the Court concludes that sanctions against Ms. Hull-Johnson would be unwarranted, because there is no evidence that her conduct, though violative of the February 1993 Final Judgment, was willful or the product of any specific intent to disobey the orders of this Court.

The Court has entered concurrently herewith Orders implementing the rulings in this opinion.

---

[12] That statute provides that "[a] person is guilty of criminal contempt when he engages in . . . (3) [i]ntentional disobedience or resistance to the process, injunction or other mandate of a court."

IN THE COURT OF CHANCERY OF THE
STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

MOTHER AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, a Delaware corporation, et al.,	)	
Plaintiffs,	)	C. A. No. 12055
v.	)	Class Action
THE CONFERENCE OF AFRICAN UNION FIRST COLORED METHODIST PROTESTANT CHURCH, a Delaware corporation, et al.,	)	
Defendants.	)	

SUPERSEDING FINAL ORDER AND JUDGMENT

The Court having issued its Amended Final Order and Judgment on May 20, 1992, and the Supreme Court having determined that that Order was interlocutory, and it appearing that only two matters await judicial action, and that it is appropriate that such judicial action is now timely and that an Order that determines finally all issues in this case;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED, DECREED AND DECLARED this 24th day of February, 1993, as follows:

1. For the reasons set forth in this Court's Opinion dated April 22, 1992:

(a) The defendants, and their agents, employees, servants, officers, attorneys, successors, assigns, and all others acting in concert or participation with them, including, but not limited to, Rev. Thomas E. Moon and Rev. Jonah I. Lindsay, are hereby enjoined and restrained from interfering with the quiet title, operation, use, enjoyment and governance of the properties of the Mother African Union First Colored Methodist Protestant Church (the "Mother Church") located at West Ninth and Franklin Streets, Wilmington, Delaware, 125 West 38th Street, Wilmington, Delaware, and Mount Olive cemetery found on Lancaster Avenue in New Castle County, Delaware. Said quiet operation, use, enjoyment and governance resides solely in the Mother Church, its duly elected trustees, its members, and their successors.

(b) The nine duly elected incumbent trustees of the Mother Church are declared to be Morris A. Comegys, Sara B. Gardner, Mary K. Walker, Jane J. Gibbs, John J. Jackson, Lydia C. Watson, Anna B. Cassidy, Lydia Clayton, and Patricia Wallace.

(c) The members of the Mother Church as of April 9, 1991, are the 229 persons listed in Plaintiffs' Trial Exhibit 20.

(d) The defendants and all others identified in paragraph (a) above are enjoined and restrained from recording in the future any further deeds, encumbrances, or other documents relating to the title to the properties identified in paragraph (a) hereof.

(e) The defendants, and all others identified in paragraph (a) above, are hereby enjoined and restrained from (i) holding themselves out as having any ownership

interest or control in the above identified properties and any other property of the Mother Church, and (ii) interfering with worship services, funerals or any other religious practices conducted by that corporation.

(f) The Indenture, dated April 6, 1991, between the Mother Church and the Conference of African Union First Colored Methodist Protestant Church recorded with the Office for the Recording of Deeds in and for New Castle County, Delaware, in Book No. 1160, page 179, is hereby declared null and void *ab initio*. Plaintiffs shall record this Order with said office and cause this Order to be so indexed so that the records of the Recorder of Deeds will reflect the invalidity of that Indenture.

(g) The counterclaim filed by the defendants is dismissed with prejudice.

2. For the reasons set forth in this Court's Opinion and Order dated May 20, 1992, adjudicating K. Kay Shearin, Esquire in violation of Court of Chancery Rule 11:

(a) The relief ordered at page 10 of that Opinion is hereby incorporated into this Order by reference; and

(b) Ms. Shearin shall pay $459 in attorneys' fees to plaintiffs' counsel in consequence of the said Rule 11 violation.

3. The plaintiffs having applied in timely fashion for an award of attorneys' fees and costs, and based upon the plaintiffs' moving papers and the letters of counsel to the Court dated February 16, 1993 and February 23, 1993:

(a) The plaintiff class is awarded the sum of $6845 as counsel fees, and the sum of $3416.88 as costs.

(b) The aforesaid attorneys' fees and costs shall be paid by the defendant, the Conference of African Union First Colored Methodist Protestant Church.

/s/ Jack B. Jacobs
Vice Chancellor

CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE I.

SECTION 9.

. . .

No Bill of Attainder or ex post facto Law shall be passed.

. . .

SECTION 10. No State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . .

ARTICLE IV.

SECTION 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.

. . .

SECTION 2. The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

. . .

ARTICLE VI.

. . .

This Constitution . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

. . .

[A]ll . . . judicial Officers . . . of the several States, shall be bound by Oath or Affirmation, to support this Constitution . . .

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, . . . or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

. . .

AMENDMENT V

No person shall be . . . deprived of . . . liberty, or property, without due process of law . . .

AMENDMENT VII

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved . . .

AMENDMENT XIV

SECTION 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of . . . liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

. . .

STATE OF DELAWARE

CONSTITUTION OF 1897

ARTICLE I

BILL OF RIGHTS

§ 1. Freedom of religion.

Section 1. . . . [N]o power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship, nor a preference given by law to any religious societies, denominations, or modes of worship.

Delaware Code

Title 8. Corporations

§ 122.

Every corporation created under this chapter shall have power to:

. . .

(2) Sue and be sued in all courts and participate, as a party or otherwise, in any judicial, administrative, arbitrative or other proceeding, in its corporate name;

. . .

(4) Purchase, receive, take by grant, gift, devise, bequest or otherwise, lease, or otherwise acquire, own, hold, improve, employ, use and otherwise deal in and with real or personal

property, or any interest therein, wherever situated, and to sell, convey, lease, exchange, transfer or otherwise dispose of, or mortgage or pledge, all or any of its property and assets, or any interest therein, wherever situated;

(5) Appoint such officers and agents as the business of the corporation requires and to pay or otherwise provide for them suitable compensation;

. . .

(8) Conduct its business, carry on its operations and have offices and exercise its powers within or without this State;

. . .

(13) Make contracts, including contracts of guaranty and suretyship, incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds and other obligations, and secure any of its obligations by mortgage, pledge or other encumbrance of all or any of its property, franchises and income, and make contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of (a) a corporation all of the outstanding stock of which is owned, directly or indirectly, by the contracting corporation, or (b) a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, or (c) a corporation all of the outstanding stock of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, all of the outstanding stock of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be

necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation, and make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion or attainment of the business of the contracting corporation;

. . .

§ 141.

. . .

(e) A member of the board of directors, or a member of any committee designated by the board of directors, shall, in the performance of his duties, be fully protected in relying in good faith upon the records of the corporation and upon such information, opinions, reports or statements presented to the corporation by any of the corporation's officers or employees, or committees of the board of directors, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the corporation.

. . .

§ 312.

(a) As used in this section, the term "certificate of incorporation" includes the charter of a corporation organized under any special act or any law of this State.

(b) Any corporation may, at any time before the expiration of the time limited for its existence and any

corporation whose certificate of incorporation has become inoperative by law for nonpayment of taxes and any corporation whose certificate of incorporation has been forfeited pursuant to subsection (c) of § 136 of this title and any corporation whose certificate of incorporation has expired by reason of failure to renew it or whose certificate of incorporation has been renewed, but, through failure to comply strictly with the provisions of this chapter, the validity of whose renewal has been brought into question, may at any time procure an extension, restoration, renewal or revival of its certificate of incorporation, together with all the rights, franchises, privileges and immunities and subject to all of its duties, debts and liabilities which had been secured or imposed by its original certificate of incorporation and all amendments thereto.

(c) The extension, restoration, renewal or revival of the certificate or incorporation may be procured by executing, acknowledging, filing and recording a certificate in accordance with § 103 of this title.

. . .

(e) Upon the filing of the certificate in accordance with § 103 of this title the corporation shall be renewed and revived with the same force and effect as if . . . its certificate of incorporation had at all times remained in full force and effect.

. . .

DELAWARE JUDGES' CODE OF JUDICIAL CONDUCT

CANON 3

A Judge Should Perform the Duties of the Office Impartially and Diligently

. . .

A. Adjudicative Responsibilities.

. . .

(4) A judge should . . . neither initiate nor consider *ex parte* or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

. . .

RULES OF CIVIL PROCEDURE FOR THE SUPERIOR COURT OF DELAWARE

RULE 41. DISMISSAL OF ACTIONS.

. . .

(e) **Upon Notice of the Court.** The Court may order an action dismissed, sua sponte, upon notice of the Court, for failure of a party diligently to prosecute the action, for failure to comply with any rule, statute, or order of the Court, or for any other reason deemed by the Court to be appropriate. In the event that the Court shall conclude, sua sponte, that dismissal upon any of the foregoing

grounds appears appropriate, the procedure for such dismissal shall be as follows: The Prothonotary shall forward to the party a notice directing that the party show cause why the action should not be dismissed for the reasons stated in the notice. The notice shall direct the party to respond within 10 days after receipt of the notice. After consideration of such response, the Court shall enter an order dismissing the action or maintaining jurisdiction of the case. If a response is not filed within the time allowed, the dismissal shall be deemed to be unopposed. If the Court is satisfied that the action should be dismissed, it shall enter an order of dismissal. Upon entry of any order of dismissal, the Court shall specify the terms thereof including provision for payment of costs. In the case of any action which has been pending in this Court for more than six months without any proceedings having been taken therein during that six months, the Prothonotary shall after the expiration of the six months mail to the parties a notice notifying them that the action will be dismissed by the Court for want of prosecution if no proceedings are taken therein within 30 days. If no proceedings are taken in the action within a period of 30 days after the mailing of such notice, it shall thereupon be dismissed by the Court as of course for want of prosecution.

. . .